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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,590	12/11/2003	Harvey Stanley Benson	108751.0001.003	8219
22892	7590	05/19/2006	EXAMINER	
VINSON & ELKINS L.L.P. 1001 FANNIN STREET 2300 FIRST CITY TOWER HOUSTON, TX 77002-6760			HAND, MELANIE JO	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 05/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/733,590

Applicant(s)

BENSON, HARVEY STANLEY

Examiner

Melanie J. Hand

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments, see Remarks, filed February 27, 2006, with respect to the rejection(s) of claim(s) 1-7 under 35 U.S.C. 102 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of a newly found prior art reference.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Chen et al (U.S. Patent Application Publication No. 2003/0050617).

With respect to **Claims 1,2,4,8,10,11**: Chen teaches absorbent article 10 comprising liquid-pervious topsheet 12, liquid-impervious backsheet 14, and absorbent core 15 located substantially entirely between said topsheet 12 and backsheet 14. Absorbent core 15 is further comprised of lower, middle and upper absorbent members 22,20 and 18, respectively. Topsheet 12 contains apertures in the central region for increased fluid intake. These apertures could be in the shape of slits. Upper absorbent member 18 of core 15 also has outward spanning lines 76 in the form of slits and is disposed above central rising member 50 which flexes upward beyond the topsheet 12 to fit against the body of the user. Member 50 is considered herein to be insertable into (claim 10), and therefore also shaped for insertion into (claim 11), at least an immediate interior portion of a user's vagina, i.e. the vestibule. Central member 50 (claim 2) has

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a removed end capable of movement between a retracted and protracted position (Figs. 7A,7B) (¶¶ 0094,0120, 0122, 0132-0134) With respect to claim 4, middle and lower absorbent members 22,20 respectively define a second section located substantially beneath central rising member 50 (first section).

With respect to **Claim 3**: Chen teaches adhesive strips 70 disposed on the garment facing side of backsheet 14 for joining said napkin to a user's undergarment. (¶ 0130)

With respect to **Claim 5**: Chen teaches that central rising member 50 forms an inverted V-shape (expansion) when longitudinal sides 78 are moved inward toward the longitudinal centerline (i.e. projected position) and thus is also capable of a retracted position when said longitudinal sides 78 are pushed outward wherein the central rising member 50 would be compressed against the topsheet and absorbent core. (¶ 0133)

With respect to **Claims 6,7**: As can best be seen in Figs. 7A and 7B, Chen teaches both a central rising member 50 that assumes an inverted V-shape (Fig. 7A, substantially U-shaped) and a member 50 that assumes a rounded, or substantially cylindrical shape (Fig. 7B)

With respect to **Claim 9**: Chen teaches that central rising member 50 has elements attaching it to a horizontal wicking barrier 24 (Fig. 5) in the form of adhesives at either or both ends of said member. (¶ 0134) As can also be seen in Fig. 5, wicking barrier 24 lies directly under topsheet 12, therefore rising member 50 is considered herein to also be effectively hingeably attached to topsheet 12.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Melanie J Hand
Examiner
Art Unit 3761

MJH

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

